

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

STEPHEN W. WIERBONSKI,

Plaintiff,

v.

CIVIL ACTION NO. 1:04CV125
(Judge Keeley)

JO ANNE BARNHART, COMMISSIONER
OF SOCIAL SECURITY ADMINISTRATION,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S
OPINION/REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. §636(b)(1)(B), Rule 72(b), Federal Rules of Civil Procedure and Local Court Rule 4.01(d), on June 21, 2004, the Court referred this Social Security action to United States Magistrate Judge John S. Kaull with directions to submit to the Court proposed findings of fact and a recommendation for disposition. On May 19, 2005, Magistrate Kaull filed his Opinion/Report and Recommendation and directed the parties, in accordance with 28 U.S.C. §636(b)(1) and Rule 6(e), Fed. R. Civ. P., to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Opinion/Report and Recommendation and further directed the parties that failure to file objections would result in a waiver of the right to appeal from the judgment of this Court. The parties did not file any objections.

**ORDER ADOPTING MAGISTRATE JUDGE'S
OPINION/REPORT AND RECOMMENDATION**

Upon consideration of the Magistrate Judge's recommendation and having received no written objections,¹ the Court accepts and approves the Opinion/Report and Recommendation. Therefore, it is **ORDERED** That Magistrate Kaull's Opinion/Report and Recommendation be, and hereby are, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate. Accordingly,

1. The plaintiff's motion for Summary Judgment (Docket No. 6) is **DENIED**;
2. The defendant's motion for Summary Judgment (Docket No. 7) is **GRANTED**; and
3. This civil action is **DISMISSED WITH PREJUDICE** and **RETIRED** from the docket of this Court.

The Clerk of Court is directed to enter a separate judgment order. Fed.R.Civ.P. 58.

¹ The failure of the parties to object to the Report and Recommendation not only waives their appellate rights in this matter, but also relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

**ORDER ADOPTING MAGISTRATE JUDGE'S
OPINION/REPORT AND RECOMMENDATION**

The Clerk of the Court is directed to transmit copies of this Order to counsel of record.

DATED: June 3, 2005.


Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE